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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

AURTIS WILSON, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

PERFORMANCE TEAM, LLC, a
Delaware corporation, and DOES 1-50,
inclusive,

Defendants.

Case No.

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Pay Overtime;**
- 3) **Failure to Provide Lawful Meal Periods;**
- 4) **Failure To Authorize And Permit Rest Periods;**
- 5) **Failure to Timely Pay Wages Due and Payable During Employment;**
- 6) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 7) **Failure to Furnish Accurate Itemized Wage Statements;**
- 8) **Violation of the Unfair Competition Law;**
- 9) **Failure to Reimburse Necessary Expenses;**

DEMAND FOR JURY TRIAL

1 Plaintiff AURTIS WILSON (“Plaintiff”), an individual, assert claims against defendant
2 PERFORMANCE TEAM, LLC, a Delaware Corporation, and DOES 1-50, inclusive (collectively
3 “Performance” or “Defendant(s)”) as follows:

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
6 on behalf of Plaintiff and any and all persons who are or were employed by Defendants as non-
7 exempt employees, however titled, in the State of California within the period of April 6, 2016
8 [four (4) years prior to the filing of the Complaint (as tolled by Emergency Rule 9)] until the
9 resolution of this lawsuit (collectively referred to as the “Class” or “Class Members” or “Non-
10 Exempt Employees”).¹

11 2. During the liability period, Defendants consistently maintained and enforced against
12 their Non-Exempt Employees unlawful practices and policies in violation of California state wage
13 and hour laws, including failing to lawfully and accurately pay Plaintiff and Class Members for all
14 hours worked, including minimum wages and overtime; failing to lawfully provide meal and rest
15 periods; failing to pay one hour of pay at the employee’s regular rate of pay when legally mandated
16 meal or rest periods were not lawfully provided; failing to reimburse necessary expenses; failing
17 to provide accurate itemized wage statements; and failing to keep accurate records.

18 3. Defendant implemented uniform policies and practices that deprived Plaintiff and
19 Class Members of earned wages, including minimum wages; straight time wages; overtime wages;
20 premium wages; failing to reimburse necessary expenses; and lawful meal and/or rest breaks.

21 4. Such actions and policies, as described above and further herein, were and continue
22 to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class
23 members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203,
24 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197,
25 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8,
26 section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, penalties,

27 _____
28 ¹ Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180
days are tolled from April 6, 2020 until October 1, 2020. (Emergency Rule 9(a).)

1 liquidated damages, and reasonable attorneys' fees and costs.

2 5. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and
3 Professions Code sections 17200-17208, also seeks restitution from Defendant for their failure to
4 pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages.

5 **JURISDICTION AND VENUE**

6 6. This action is brought as a Class Action on behalf of Plaintiff and similarly situated
7 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary
8 damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the
9 California Superior Court and will be established according to proof at trial.

10 7. This Court has jurisdiction over this action pursuant to the California Constitution
11 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
12 those given by statute to other courts. The statutes under which this action is brought do not give
13 jurisdiction to any other court.

14 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
15 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

16 9. This Court has jurisdiction over Defendants because, upon information and belief,
17 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
18 otherwise intentionally avails itself of the California market so as to render the exercise of
19 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
20 substantial justice. Defendant has done and is doing business throughout California.

21 10. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
22 similarly situated Non-Exempt Employees within Los Angeles County and it is believed that
23 Defendants have employed over one hundred Class Members as Non-Exempt Employees
24 throughout the state.

25 11. The California Superior Court also has jurisdiction in this matter because the
26 individual claims of the Class Members described herein are presently believed to be under the
27 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
28 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including

1 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be
2 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
3 Further, there is no federal question at issue, as the issues herein are based solely on California
4 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
5 Procedure, the California Civil Code, and the California Business and Professions Code.

6 12. Venue is proper in this Court because one or more of the Defendants reside, transact
7 business, or have offices in this County, and the acts or omissions alleged herein took place in this
8 County.

9 PARTIES

10 13. Performance Team, LLC, is a Delaware limited liability company in good standing
11 that is authorized to do business throughout the state. Performance Team, LLC's headquarters are
12 located at 2240 East Maple Ave., El Segundo, CA 90245.

13 14. Performance Team, LLC is a distribution and logistics company that operates in
14 California from numerous locations throughout the State.

15 15. Plaintiff Aurtis Wilson is a resident of California, and was during the relevant
16 period.

17 16. Plaintiff was employed by defendant during the relevant period as an hourly non-
18 exempt employee based in Santa Fe Springs, CA serving locations throughout Southern California,
19 especially the Inland Empire.

20 17. Plaintiff and the members of the putative class were employed by Defendants as
21 hourly non-exempt employees, however titled, (the "Class Members" or "Non-Exempt
22 Employees") during the liability period.

23 18. Whenever in this complaint reference is made to any act, deed, or conduct of
24 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
25 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
26 actively engaged in the management, direction, control, or transaction of the ordinary business and
27 affairs of Defendants.

28 19. The true names and capacities of Defendants, whether individual, corporate,

1 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
2 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
3 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
4 capacities of the Defendants designated hereinafter as DOES when such identities become known.

5 20. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
6 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
7 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
8 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
9 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
10 liability of the Defendants as alleged herein.

11 21. Plaintiff is further informed and believes, and thereon alleges, that at all times
12 material herein, each Defendant was completely dominated and controlled by its co-Defendants
13 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
14 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
15 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
16 Whenever and wherever reference is made to individuals who are not named as Defendants in this
17 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
18 acted on behalf of Defendants named in this complaint within the scope of their respective
19 employments.

20 **FACTUAL ALLEGATIONS**

21 22. During the relevant time frame, Defendant compensated Plaintiff and the Non-
22 Exempt Employees based upon an hourly wage.

23 23. Plaintiff and the Class Members were, and at all times pertinent hereto, have been
24 non-exempt employees within the meaning of the California Labor Code, and the implementing
25 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
26 the IWC Wage Orders and the Labor Code.

27 24. Plaintiff was employed as an hourly non-exempt employee for Defendants from
28

February 2017, through December 2019.

25. Plaintiff typically worked five days a week, generally in excess of 40 hours a week.

26. Plaintiff is informed and believes, and thereon alleges, that Defendant's are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

27. All Class Members, including Plaintiff, are similarly situated in that they are all subject to Defendants' uniform policies and systemic practices as specified herein.

28. Plaintiff and the Class Members were not properly compensated for all hours worked, in part because they were frequently required to work off the clock.

29. Moreover, employees were required to remain on premises during purported breaks, and be on call during purportedly provided breaks, including meal periods. Such hours constitute hours worked.

30. In addition, the Class Members frequently worked in excess of eight (8) hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such time at a rate of time and one-half the employee's regular rate of pay per hour. Plaintiff and the Class Members also often worked in excess of twelve (12) hours in one day and/or over eight (8) hours on the seventh day of the workweek, but were not properly paid for such time at a rate of two times the employee's regular rate of pay per hour.

31. Class Members were regularly required to work shifts in excess of five hours without being provided a lawful meal period and over ten hours in a day without being provided a second lawful meal period as required by law.

32. Indeed, during the relevant time, as a consequence of Defendants' staffing and scheduling practices, work demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint uninterrupted 30-minute meal periods on shifts over five hours and second meal period on shifts over 10 hours as required by law.

33. Furthermore, when meal periods were provided they were frequently interrupted, late or short.

1 34. On information and belief, Plaintiff and Class Members did not waive their rights
2 to meal periods under the law.

3 35. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
4 periods.

5 36. Despite the above-mentioned meal period violations, Defendants failed to
6 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
7 additional hour of pay at their regular rate as required by California law when meal periods were
8 not timely or lawfully provided in a compliant manner.

9 37. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
10 should know, knew, and/or should have known that Plaintiff and the other Class Members were
11 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
12 were not receiving such compensation.

13 38. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
14 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
15 period for every four hours worked or major fraction thereof, which is a violation of the Labor
16 Code and IWC wage order.

17 39. Defendants maintained and enforced scheduling practices, policies, and imposed
18 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
19 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
20 requisite rest periods were not lawfully authorized and permitted.

21 40. In addition, per Defendants' handbook, Plaintiff and the Class Members were not
22 allowed to leave the premises during rest breaks.

23 41. Furthermore, Plaintiff and the Class Member were required to carry work cellular
24 phones or walkie-talkies during purportedly provide meal and rest breaks and were required to be
25 on call. Meal and rest breaks, when provided, were frequently interrupted.

26 42. Despite the above-mentioned rest period violations, Defendant did not compensate
27 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
28 their regular rate as required by California law, including Labor Code section 226.7 and the

1 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
2 permitted.

3 43. Moreover, Plaintiff and the Class Members were required to incur necessary
4 expenses in the discharge of their duties, including without limitation for the purchase of office
5 supplies including cables, tools, and batteries, but were not reimbursed for such necessary
6 expenses.

7 44. Defendant also failed to provide accurate, lawful itemized wage statements to
8 Plaintiff and the Class Members in part because of the above specified violations. In addition,
9 upon information and belief, Defendants omitted an accurate itemization of total hours worked
10 and wages earned.

11 45. Defendants have also made it difficult to determine applicable rates of pay and
12 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
13 Exempt Employees, including Plaintiff, during the liability period because they did not
14 implement and preserve a lawful record-keeping method to record all hours worked, meal
15 periods, and non-provided rest and meal periods owed to employees as required for non-exempt
16 employees by 29 U.S.C. section 211(c), California Labor Code section 226, and applicable
17 California Wage Orders.

18 46. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
20 thereof for resignations without prior notice as the case may be) they had a duty to accurately
21 compensate Plaintiffs and Class Members for all wages owed including minimum wages, straight
22 time wages, overtime, meal and rest period premiums, and that Defendants had the financial ability
23 to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so
24 in part because of the above-specified violations.

25 47. Plaintiff and the Class Members are covered by applicable California IWC Wage
26 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
27 section 11000 *et seq.*

1 **CLASS ACTION ALLEGATIONS**

2 48. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
3 other person similarly situated, and thus, seeks class certification under California Code of Civil
4 Procedure §382.

5 49. All claims alleged herein arise under California law for which Plaintiff seeks relief
6 as authorized by California law.

7 50. The **proposed class** is comprised of and defined as: All persons currently or
8 formerly employed by Defendants as non-exempt employees, however titled, in the State of
9 California within the period of April 6, 2016 [four (4) years prior to the filing of the Complaint (as
10 tolled by Emergency Rule 9)] until the resolution of this lawsuit (hereinafter collectively referred
11 to as the “Class” or “Class Members”).

12 51. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which
13 are composed of Class Members satisfying the following definitions:

14 a. All Class Members who were not paid at least minimum wage for all hours
15 worked (collectively “**Minimum Wage Subclass**”);

16 b. All Class Members who were not accurately paid overtime for hours worked
17 over eight in a day or over forty in a workweek (collectively “**Overtime Subclass**”);

18 c. All Class Members who worked more than five (5) hours in a workday and
19 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes
20 (hereinafter collectively referred to as the “**First Meal Period Subclass**”);

21 d. All Class Members who worked more than ten (10) hours in a workday and
22 were not provided with a timely, uninterrupted lawful second meal period of net thirty (30) minutes
23 (hereinafter collectively referred to as the “**Second Meal Period Subclass**”);

24 e. All Class Members who worked more than three and a half hours in a
25 workday and were not authorized and permitted to take a lawful net 10-minute rest period for every
26 four (4) hours or major fraction thereof worked per day (hereinafter collectively referred to as the
27 “**First Rest Period Subclass**”);

28 f. All Class Members who were required to remain on-call during purported

meal periods (hereinafter collectively referred to as the “**On-Call Meal Period Subclass**”);

g. All Class Members who were required to remain on premises and on-call during purported rest periods (hereinafter collectively referred to as the “**On-Call Rest Period Subclass**”);

h. All Class Members who did not receive all owed wages at the time of separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the “**Waiting Time Subclass**”);

i. All Class Members who were not provided with accurate and complete itemized wage statements (hereinafter collectively referred to as the “**Inaccurate Wage Statement Subclass**”);

j. All Class Members who were employed by Defendants and subject to Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “**Unfair Business Practices Subclass**”).

k. All Class Members who were not reimbursed for all necessary expenditures (collectively “**Indemnification Subclass**”).

52. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate, or if it should be deemed necessary by the Court or to further divide the Class Members into additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the Class Members or the Plaintiffs’ Class includes the members of each of the Subclasses.

53. As set forth in further detail below, this action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation, and the proposed Class and Subclasses are easily ascertainable through Defendants’ records.

a. Numerosity: The members of the Class and Subclasses are so numerous that joinder of all members of the Class and Subclasses would be unfeasible and impractical. The membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the Class is estimated to be over a hundred individuals. Accounting for employee turnover during the

relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

b. The proposed class is easily ascertainable. The number and identity of the class members are determinable from Defendants' payroll records and time records for each class member.

c. Commonality: There are common questions of law and fact as to the Class and Subclasses that predominate over questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

1) Whether Defendants paid Class Members at least minimum wage for all hours worked;

2) Whether Defendants were required to pay Class Members for on call meal periods;

3) Whether Defendants knew or should have known that Class Members were required to perform work off the clock;

4) Whether Defendants accurately calculated and paid all Class Members overtime premiums for the hours which Plaintiff and Class Members worked in excess of eight (8) hours per day and/or forty (40) hours per week;

5) Whether Defendants had a policy and practice of providing lawful, timely meal periods in accordance with Labor Code § 512, as well as the applicable IWC Wage Order;

6) Whether Defendants had a policy and practice of providing second lawful, timely meal periods in accordance with Labor Code § 512 on shifts over ten hours;

7) Whether Defendants required Class Members to remain on-call during meal periods;

8) Whether Defendants on-duty meal periods were lawful;

9) Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and IWC Wage Order on each instance that a lawful meal period was not provided;

1 10) Whether Defendants failed to authorize and permit a lawful, net 10-minute
2 rest period to the Class Members for every four (4) hours or major fraction thereof worked;

3 11) Whether Defendants authorized and permitted third rest periods on shifts
4 over ten hours;

5 12) Whether Defendants required employees to remain on the premises during
6 rest periods;

7 13) Whether Defendants had a policy and practice of complying with Labor
8 Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not
9 provided;

10 14) Whether Defendants failed to timely pay all wages upon separation in
11 accordance with Labor Code sections 201-202;

12 15) Whether Defendants failed to reimburse employees for necessary expenses
13 in accordance with Labor Code section 2802;

14 16) Whether Defendants omitted required information from itemized wage
15 statements;

16 17) Whether Defendants failed to maintain accurate records of Class Members'
17 earned wages, work periods, meal periods and deductions;

18 18) Whether Defendants engaged in unfair competition in violation of section
19 17200 et seq. of the Business and Professions Code;

20 19) Whether Defendants' conduct was willful and/or reckless;

21 20) Whether Defendants failed to provide accurate itemized wage statements in
22 violation of Labor Code § 226; and

23 21) The appropriate amount of damages, restitution, and/or monetary penalties
24 resulting from Defendants' violations of California law.

25 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect the
26 interests of each member of the Class and Subclasses with whom he has a well-defined community
27 of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by
28 any member of the Class and/or Subclasses, and the relief sought is typical of the relief which

1 would be sought by each member of the Class and/or Subclasses in separate actions. All members
2 of the Class and/or Subclasses have been similarly harmed by Defendants' policies and practices
3 giving rise to the violations set forth herein, that affected each member of the Class and/or
4 Subclasses similarly. Further, Defendants benefited from the same type of unfair and/or wrongful
5 acts as to each member of the Class and/or Subclasses.

6 e. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
7 interests of each member of the Class and/or Subclasses with whom he has a well-defined
8 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that
9 he has an obligation to make known to the Court any relationships, conflicts, or differences with
10 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
11 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are
12 versed in the rules governing class action discovery, certification, litigation, and settlement and
13 experienced in handling such matters. Other former and current employees of Defendants may also
14 serve as representatives of the Class and Subclasses if needed.

15 f. Superiority: The nature of this action makes the use of class action
16 adjudication superior to other methods. A class action will achieve economies of time, effort,
17 judicial resources, and expense, which would not be achieved with separate lawsuits. The
18 prosecution of separate actions by individual members of the Class and/or Subclasses would create
19 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
20 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
21 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
22 disposition of their interests through actions to which they were not parties. Thus, a class action is
23 superior to other available means for the fair and efficient adjudication of this controversy because
24 individual joinder of all Class Members is not practicable, and questions of law and fact common
25 to the Class predominate over any questions affecting only individual Class Members. Each
26 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
27 unlawful policies and practices as specified herein. Class action treatment will allow those similarly
28 situated persons to litigate their claims in the manner that is most efficient and economical for both

1 parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be
2 encountered in the management of this action that would preclude its maintenance as a class action.

3 g. Public Policy Considerations: Employers in the state of California violate
4 employment and labor laws every day. However, current employees are often afraid to assert their
5 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
6 because they believe their former employers may damage their future endeavors through negative
7 references and/or other means. The nature of this action allows for the protection of current and
8 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
9 California have a significant interest in ensuring employers comply with California's labor laws
10 and in ensuring those employers who do not are prevented from taking further advantage of their
11 employees.

12 **CLASS ACTION CLAIMS**

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **(By Plaintiff and the Class Against Defendants)**

16 54. Plaintiff incorporates each and every allegation set forth in all of the foregoing
17 paragraphs as if fully set forth herein.

18 55. Labor Code section 204 establishes the fundamental right of all employees in the
19 State of California to be paid wages, including minimum wage, straight time and overtime, in a
20 timely fashion for their work.

21 56. Labor Code section 1194 (a) provides that notwithstanding any agreement to work
22 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
23 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
24 of the full amount of this minimum wage or overtime compensation, including interest thereon,
25 reasonable attorney's fees, and costs of suit.

26 57. Labor Code section 1197 provides: The minimum wage for employees fixed by
27 the commission or by any applicable state or local law, is the minimum wage to be paid to
28 employees, and the payment of a lower wage than the minimum so fixed is unlawful.

1 58. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
2 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
3 IWC Wage Order(s).

4 59. The applicable wage orders and California Labor Code §§ 1197 and 1182.12
5 establish the right of employees to be paid minimum wages for all hours worked, in amounts set
6 by state law.

7 60. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
8 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
9 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal
10 to the unpaid wages and interest accrued thereon.

11 61. During all relevant periods, the California Labor Code and wage orders required
12 that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due
13 for all hours worked.

14 62. The IWC Wage Orders define "hours worked" as "the time during which an
15 employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so."

17 63. At all times relevant, Plaintiff and Class Members consistently worked hours for
18 which they were not paid because Defendants frequently required Plaintiff and the Class
19 Members to work off the clock.

20 64. In addition, Plaintiff and the Class Members were required to remain on-call and
21 carry cellular phones or other communication devices during purported meal and rest breaks.

22 65. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
23 Class Members were working off the clock and that they should have been paid for this time.

24 66. Defendant's policy and practice of not paying all minimum wages violates
25 California Labor Code §§ 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
26 applicable wage order 7-2001.

27 67. Due to Defendants' violations of the California Labor Code and wage orders,
28 Plaintiff and the Minimum Wage Subclass members are entitled to recover from Defendant their

1 unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-
2 judgment and post-judgment interest, as well as liquidated damages.

3
4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME**

6 **(By Plaintiff and the Class Against All Defendants)**

7 68. Plaintiff incorporates each and every allegation set forth in all of the foregoing
8 paragraphs as if fully set forth herein.

9 69. During all relevant periods, Defendant required Plaintiff and the Class members to
10 work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours
11 per workweek.

12 70. During all relevant periods, both the California Labor Code section 1194, 1197,
13 510, 1198, and the pertinent wage order 7-2001 required that all work performed by an employee
14 in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in
15 excess of forty (40) hours in any workweek be compensated at one and one-half times the
16 employee's regular rate of pay. Any work in excess of twelve (12) hours in one day is required to
17 be compensated at the rate of no less than twice the regular rate of pay for an employee. In
18 addition, any work in excess of eight hours on any seventh day of a workweek is required to be
19 compensated at the rate of no less than twice the regular rate of pay of an employee.

20 71. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff
21 and the Class members to work in excess of eight (8) hours in a workday and/or in excess of forty
22 (40) hours in a workweek without compensating them at a rate of one and one-half times their
23 regular rate of pay. Upon information and belief, Defendants also failed to properly compensate
24 Plaintiff and the Class Members for hours worked in excess of twelve (12) hours in one day, or
25 eight hours on the seventh day of a workweek.

26 72. The IWC Wage Orders define "hours worked" as "the time during which an
27 employee is subject to the control of an employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so."

73. At all times relevant, Plaintiff and Class Members consistently worked hours for which they were not paid because Plaintiff and the Class Members were required to work off the clock—some of these hours were over eight hours in one workday or in excess of forty hours in a workweek and should have been paid at the overtime rate.

74. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the Class Members were working off the clock and that they should have been paid for this time.

75. In addition, upon information and belief, Defendants failed to incorporate all forms of compensation, including without limitation bonuses and incentives, into the regular rate for overtime purposes.

76. As a result, Defendants failed to pay Plaintiff and the Class members earned overtime wages and such employees suffered damages as a result.

77. Defendants knew or should have known Plaintiffs and the Class Members were undercompensated as a result of these practices.

78. Due to Defendant's violations of the California Labor Code, Plaintiff and the Class members are entitled to recover from Defendants their unpaid overtime wages, reasonable attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, statutory penalties, and liquidated damages.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE LAWFUL MEAL PERIODS

(By Plaintiff and the Class Against All Defendants)

79. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

80. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

81. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee

1 for a work period of more than ten (10) hours without providing a second meal break of not less
2 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
3 break may only be waived by mutual consent, and if the employee did not waive his or her first
4 meal period, and the employee's work day will not exceed twelve hours.

5 82. During the relevant time, Defendants failed to provide Plaintiff and Class Members
6 timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five
7 hours of a shift.

8 83. During the relevant time, Defendants also failed to provide Plaintiff and Class
9 Members timely and uninterrupted second meal periods of not less than thirty (30) minutes on shifts
10 longer than ten hours.

11 84. Indeed, during the relevant time, as a consequence of Defendants' staffing and
12 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
13 Plaintiff and the Class Members were not provided with legally required meal periods.

14 85. Moreover, Plaintiff and Class required to carry cellular phones and other
15 communications devices and were required to remain on-call during purported meal periods.

16 86. Meal periods, when provided, were frequently late, short or interrupted.

17 87. On information and belief, Plaintiff and Class Members did not waive their rights
18 to meal periods under the law.

19 88. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
20 periods.

21 89. Plaintiff and the Class Members were not paid one hour of pay at their regular rate
22 for each day that a first or second meal period was not lawfully provided.

23 90. As a proximate result of the aforementioned violations, Plaintiff and the Class
24 Members have been damaged in an amount according to proof at time of trial.

25 91. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover
26 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also
27 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

28 92. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to

1 represent have been deprived of premium wages in amounts to be determined at trial, and are
2 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
3 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
4 section 3287.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

7 **(By Plaintiff and the Class Against All Defendants)**

8 93. Plaintiff incorporates by reference and realleges each and every allegation contained
9 above, as though fully set forth herein.

10 94. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members'
11 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
12 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
13 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
14 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
15 be counted as hours worked, for which there shall be no deduction from wages."

16 95. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
17 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
18 Wage Order(s).

19 96. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
20 during any rest period mandated by an applicable order of the IWC.

21 97. Defendants were required to authorize and permit employees such as Plaintiff and
22 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours
23 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,
24 with no deduction from wages.

25 98. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class
26 Member's employment with Defendants, Defendants failed and refused to authorize and permit
27 Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours
28 worked, or major fraction thereof.

99. In addition, per Defendants' employee handbook, Plaintiff and the Class Members were not allowed to leave the premises during rest periods.

100. Moreover, Plaintiff and Class required to carry cellular phones and other communications devices and were required to remain on-call during purported meal periods.

101. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay for each day that a rest period violation occurred. On information and belief, the other members of the Class endured similar violations as a result of Defendants' rest period policies and practices and Defendant did not pay said Class Members premium pay as required by law.

102. By their failure to authorize and permit Plaintiff and the Class Members to take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

103. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING

EMPLOYMENT

(By Plaintiff and the Class Against All Defendants)

104. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

105. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

106. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became due and payable to each employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

107. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code to Plaintiff and the Class Members.

108. Labor Code section 210 (a) provides that “In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

103. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to Labor Code § 210, 218.5, 218.6, 510, 1194.

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

(By Plaintiff and the Waiting Time Subclass Against All Defendants)

109. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

110. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due within seventy-two (72) hours of separation of employment.

111. Defendants violated §§ 201 and 202 by failing to pay all employees all wages earned within the time frames required.

112. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

113. Plaintiff and Class Members are entitled to compensation for all forms of wages earned, including but not limited to minimum wages, overtime, and premium meal and rest period compensation, but to date have not received such compensation, therefore entitling them to Labor Code § 203 penalties.

114. More than thirty (30) days have passed since affected Waiting Time Subclass Members have left Defendants' employ, and on information and belief, they have not received payment pursuant to Labor Code § 203.

115. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

By Plaintiff and Wage Statement Subclass Against Defendants

116. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

117. Labor Code section 226(a) reads in pertinent part: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the

1 pay period and the corresponding number of hours worked at each hourly rate by the
2 employee....”.

3 118. Further, the IWC Wage Orders require in pertinent part: Every employer shall
4 keep accurate information with respect to each employee including the following: (3) Time
5 records showing when the employee begins and ends each work period. Meal periods, split shift
6 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
7 payroll period and applicable rates of pay....”

8 119. Labor Code section 1174 of the California also requires Defendants to maintain
9 and preserve, in a centralized location, among other items, records showing the names and
10 addresses of all employees employed and payroll records showing the hours worked daily by, and
11 the wages paid to, its employees. On information and belief and based thereon, Defendants have
12 knowingly and intentionally failed to comply with Labor Code section 1174, including by
13 implementing the policies and procedures and committing the violations alleged in the preceding
14 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
15 unlawful pursuant to Labor Code section 1175.

16 120. Defendants have failed to record many of the items delineated in applicable
17 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
18 1174, including by virtue of the fact that each wage statement which failed to accurately
19 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
20 meal and rest periods, or which failed to include compensation for all minimum wages earned or
21 overtime hours worked, was an inaccurate wage statement.

22 121. On information and belief, Defendants failed to implement and preserve a lawful
23 record-keeping method to record all hours worked, meal periods, and non-provided meal and rest
24 periods owed to employees, as required for Non-Exempt Employees under California Labor Code
25 section 226 and applicable California Wage Orders. In order to determine if they had been paid
26 the correct amount and rate for all hours worked, Plaintiff and Class Members have been, would
27 have been, and are compelled to try to discover the required information missing from their wage
28 statements and to perform complex calculations in light of the inaccuracies and incompleteness of

1 the wage statements Defendants provided to them.

2 122. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
3 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
4 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
5 required information. Specifically, Defendants have also omitted accurate itemizations of total
6 hours worked, and gross pay from Plaintiff and the Class Members' wage statements. In addition,
7 Defendants have failed to provide accurate itemized wage statements as a consequence of the
8 above-specified violations for failure to accurately pay all wages owed, accurately record all
9 hours worked, and failure to pay meal and rest period premiums as required by law.

10 123. Moreover, upon information and belief, as a pattern and practice, in violation of
11 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
12 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
13 Statement Class, including but not limited to, beginning and ending of each work period, meal
14 period and split shift interval, the total daily hours worked, and the total hours worked per pay
15 period and applicable rates of pay.

16 124. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
17 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
18 Class in that the members of the Wage Statement Class were not timely provided written accurate
19 itemized statements showing all requisite information, such that the members of the Wage
20 Statement Class were misled by Defendants as to the correct information regarding various items,
21 including but not limited to the identity of the employer, total hours worked by the employee,
22 gross pay, net wages earned and all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate.

24 125. Pursuant to Labor Code section 226, and in light of Defendants' violations
25 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up
26 to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

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EIGHTH CAUSE OF ACTION
VIOLATION OF THE UNFAIR COMPETITION LAW

By Plaintiff and Class Against All Defendants

126. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

127. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the general public. Plaintiff also seeks to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure § 1021.5.

128. Defendants' policies, activities, and actions as alleged herein are violations of California law and constitute unlawful business acts and practices in violation of California Business and Professions Code §§ 17200, *et seq.*

129. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on the violation of any state or federal law.

130. The state law violations, including violations of the relevant IWC Wage Order, detailed herein above are the predicate violations for this cause of action. By way of example only, in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders. Defendants further violated the law through their policies of failing to reimburse expenses and failing to fully and accurately compensate Plaintiff and the Class Members for all hours worked, including minimum wages and overtime as well as failing to provide accurate itemized wage statement as specified above.

131. Plaintiff and the Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

132. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff and the Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four (4) years prior to the filing of this complaint (as tolled by

Emergency Rule 9); an award of attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of costs.

NINTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY EXPENSES

By Plaintiff and Class Against All Defendants

133. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

134. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

135. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

136. Plaintiff and the members of the Indemnification Class were required to incur expenses in the performance of their assigned job duties. For example, Plaintiff and the Indemnification Class Members were required to incur numerous out of pocket expenses, including without limitation, cables, tools, and batteries, in direct consequence of the discharge of their duties.

137. Upon information and belief, the Defendants did not reimburse Plaintiff or the Plaintiff's subclass for such expenses.

138. As a result of the unlawful acts of Defendants, Plaintiff and the Subclass Members have been deprived of un-reimbursed sums in amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §2802.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representatives of the Class;
3. That Plaintiff be appointed as the representatives of the Subclasses; and

1 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

2 **On the First Cause of Action**

3 **(Failure to pay Minimum Wages)**

4 1. For the unpaid balance of the full amount of any minimum wages and regular wages
5 owed, as well as interest thereon,

6 2. Penalties according to statute,

7 3. Liquidated damages,

8 4. Reasonable attorneys' fees, and costs of suit;

9 5. For interest and

10 6. For such other and further relief as the Court deems proper.

11 **On the Second Cause of Action**

12 **(Failure to Pay Overtime Owed)**

13 1. For the unpaid balance of the full amount of overtime earned,

14 2. Penalties according to statute,

15 3. Liquidated damages,

16 4. Reasonable attorneys' fees, and costs of suit;

17 5. For interest; and

18 6. For such other and further relief as the Court deems proper.

19 **On the Third Cause of Action**

20 **(Failure to Provide Lawful Meal Periods)**

21 1. For one (1) hour of premium pay for each day in which a required meal period was
22 not lawfully provided;

23 2. For reasonable attorneys' fees and costs pursuant to statute; and

24 3. For such other and further relief as the Court deems proper.

1 **On the Fourth Cause of Action**

2 **(Failure to Authorize and Permit Lawful Rest Periods)**

- 3 1. For one (1) hour of premium pay for each day in which a required rest period was
4 not lawfully authorized and permitted; and
5 2. For reasonable attorneys' fees and costs pursuant to statute; and
6 3. For such other and further relief as the Court deems proper.

7 **On the Fifth Cause of Action**

8 **(Failure to Timely Pay Wages Due and Payable During Employment)**

- 9 1. For unpaid wages;
10 2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages
11 unlawfully withheld;
12 3. For interest;
13 4. For reasonable attorneys' fees and costs pursuant to statute; and
14 5. For such other and further relief as the Court deems proper.

15 **On the Sixth Cause of Action**

16 **(Failure to Timely Pay Wages At Separation)**

- 17 6. For unpaid wages;
18 7. For penalties pursuant to Labor Code § 203;
19 8. For interest;
20 9. For reasonable attorneys' fees and costs pursuant to statute; and
21 10. For such other and further relief as the Court deems proper.

22 **On the Seventh Cause of Action**

23 **(Failure to Provide Accurate Itemized Wage Statements)**

- 24 1. For statutory penalties, including penalties pursuant to Labor Code section 226;
25 2. For reasonable attorneys' fees and costs; and
26 3. For such other and further relief as the Court deems proper;

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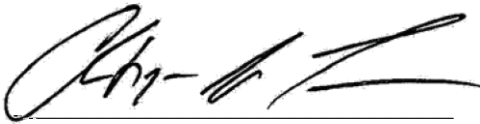
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this
3 matter.

4 Respectfully submitted,

5 **JAMES HAWKINS APLC**

6 

7 Dated: October 1, 2020

8 James R. Hawkins, Esq.

9 Christina M. Lucio, Esq.

10 Attorneys for Plaintiff AURTIS WILSON, on behalf of
11 himself and all others similarly situated
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